

## **Tobacco legislation, regulations and voluntary agreements (England and European Union)**

Action on Smoking on Health

Updated 29 September 2003

**Overall policy**

**International**

**Advertising, promotion & sponsorship**

**Broadcasting guidelines**

**Smoking in the workplace**

**Smoking in public places**

**Youth access**

**Customs and Excise**

**Taxation**

**Product regulation and labelling**

**Smoking cessation**

**Consumer protection**

**Agriculture**

**European Union treaty and case law**

### **Introduction**

This document is a reference guide to tobacco related legislation, policy and voluntary agreements that apply in the UK, including European Union and international measures.

Official texts of legislation and voluntary agreements that apply in England and European Union directives relevant to tobacco are available from this page. Some of this legislation also applies in Wales, Scotland and Northern Ireland. European Union legislation applies in each EU member state, but there will be different implementing legislation in each country.

The page also includes, legislation that has been passed but has yet to come into effect, legislation in preparation, and initiatives that are under negotiation, such as the Framework Convention on Tobacco Control, which is currently being negotiated by the World Health Organisation.

Please notify Naj Dehlavi at ASH of any omissions, errors or other suggestions

Overall policy		Back to Top
Regulation	Description	
<b>UK</b> Smoking Kills - A White Paper Policy document December 1998  The NHS Cancer Plan Policy document September 2000  Saving Lives: Our Healthier Nation Policy document July 1999	This White Paper is the prime statement of government policy to tackle tobacco use in Britain.	
	The White Paper spells out a package of measures each of which are intended to add to the impact of the others to reduce smoking prevalence – it includes banning tobacco advertising, use of taxation, support for smokers wanting to quit, smoke-free policies and a range of targets.	
	The NHS Cancer Plan seeks to address issues relating to cancer, from prevention, to detection and treatment of the disease. The document recognises smoking to be a major contributor to prevalence of the disease and hence sets out targets for improving prevention which include reducing tobacco use in disadvantaged groups.  Saving Lives: Our Healthier Nation sets out a broad strategy for improving health and tackling health inequalities. It also sets out targets for the reduction of cancer and coronary heart disease and stroke by 2010.	
<b>EU</b> EU Council Recommendation [pdf] Council Recommendation on the prevention of smoking and on initiatives to improve tobacco control	2 December 2002: This is a non-binding policy statement from the Council to the member states of the EU, covering issues that are not regulated at EU level, including retailing, vending machines, passive smoking, indirect advertising and disclosure of marketing budgets.  It may be used for forming EU positions in international negotiations.  The German delegation voted against the proposed recommendation	



Advertising, promotion & sponsorship		Back to Top
Regulation	Description	
For television advertising and promotion see Broadcasting Guidelines below		
<b>UK</b> Tobacco Advertising and Promotion Act 2002 In Force. Commencement order Transitional regulations (sponsorship) Draft regulations (brandsharing) Draft regulations (point of sale)  DH consultation on draft regulations relating to brand-sharing, sponsorship and point of sale materials and ASH response	The Tobacco Advertising and Promotion Act received Royal Assent on 7 November 2002 and came into force on 14 February 2003.  The Tobacco Advertising and Promotion Act 2002 comprehensively bans the advertising and promotion of tobacco products including the use of brand-sharing and sponsorship of cultural and sport events.  The timetable for implementation is as follows: <ul style="list-style-type: none"> <li>• 14th February 2003 - from that date it will be an offence to advertise tobacco products on billboards, newspapers, magazines, direct mail etc.</li> <li>• Point of Sale (POS) advertising: The draft regulations governing advertising and promotional material at POS were submitted to the European Commission for approval on 24 September 2003. The process for EU approval can take up to a further six months. They will enter into force 9 months later.</li> <li>• Transitional phase-out for sponsorship: 30 July 2003 for domestic sponsorships; 31 July 2005 for 'global events' such as Formula One and World Snooker.</li> <li>• Brandsharing: Draft regulations on brandsharing were published in September 2003. These are being considered by the European Commission. They will enter into force 12 months later.</li> </ul> More information on implementation timetable: <a href="http://www.ash.org.uk/?adban">www.ash.org.uk/?adban</a>	
<b>EU</b> COD 2001/0119 [pdf] Agreed <ul style="list-style-type: none"> <li>• DH consultation on inclusion of cigarette papers in the ban and ASH response</li> </ul> <b>Directive on the banning of tobacco advertising and promotion</b>	On 2 December 2002 the Council reached a political agreement on a proposed directive to ban tobacco advertising. The text that was agreed for this directive is formulated to act within the Commission's conservative view of the narrow boundaries of EU competence established by the treaty as interpreted by the ECJ.  The directive covers four areas of cross border advertising (printed publications, internet, radio and sponsorship), but does not include indirect advertising and will be easily circumvented by modern promotional techniques or moving promotional activity - such as sports sponsorship - outside the EU.  During earlier discussions on the proposals some member states had suggested that any ban on tobacco advertising should include a ban on the advertising of cigarette papers. In August 200, the UK government issued a consultation document, inviting comments on this specific matter.  A previous EC directive to ban tobacco advertising 98/43/EC was struck down by a European Court of Justice ruling (Case C-376/98) on account of its legal base.  The court argued that the Directive must contribute to "eliminating appreciable distortions of competition" and "eliminating obstacles to the free movement of goods and to the freedom to provide services". The Court found the directive failed these tests.	
<b>EU</b> Directive 2000/31/EC	This directive establishes a free internal market in information society products such as services offered over the web. It's	

<p>In force</p> <p><b>Regulation of information society services– “the e-commerce directive”</b></p>	<p>relevance to tobacco is that uses a particular definition for ‘commercial communication’ (advertising) – see article 2(f) and provides in-principle exemptions from general freedom for public health.</p> <p><b>Exemption for public health</b>  <i>Article 1 (3). This Directive complements Community law applicable to information society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and national legislation implementing them in so far as this does not restrict the freedom to provide information society services.</i></p> <p>Article 3 (4) defines exemptions from single market rules more specifically.</p>
<p><b>EU</b>  COM 546 2001 final [pdf]  Proposal</p> <ul style="list-style-type: none"> <li>• DTI consultation on draft EU regulations relating sales promotion and ASH response</li> </ul> <p><b>Sales promotions in the Internal Market</b></p>	<p>In the interest of a strong internal market, emphasis of this EU proposal falls on the primacy of free movement of goods and services within member states. It seeks to harmonise differing sales promotion regulations between countries to minimise distortions in trade. It describes sales promotion as financial discounts, free gifts, promotional contests or games offered by a producer in order to expand markets.</p> <p>Though the proposal makes reference to public health in Article 5 (protection of children and adolescents), it remains highly controversial - article 3 of the proposed regulation prohibits member states from restricting commercial communications of a sales promotion unless required by community law.</p> <p>In the absence of an EU directive explicitly prohibiting tobacco promotion, the proposal carries the potential to undermine any effort to ban the promotion of tobacco products at national levels.</p>
<p><b>Links</b></p> <p>Further links to relevant documents on tobacco advertising and promotion</p>	

Broadcasting guidelines		Back to Top
Regulation	Description	
<p><b>EU</b> Council Directive 89/552/EEC In Force</p> <p><b>Television without Frontiers</b></p> <p>Amended by: Directive 97/36/EEC In Force</p> <p>Implemented in England via The Broadcasting Act 1990. Section 93 of the Act in turn confers responsibility for control of advertisements to the Independent Television Commission.</p>	<p>Set of protocols that seek to harmonise broadcasting activities of member states. Trans-national broadcasting via satellite necessitates that content of national broadcasts do not prejudice the laws of other member states. Under this Directive, all television advertising promoting cigarettes and other tobacco products is prohibited including indirect advertising.</p> <p>Whereas it is necessary to prohibit all television advertising promoting cigarettes and other tobacco products including indirect forms of advertising which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on advertising by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products;</p> <p>Article 13 states:</p> <p>Art 13 "All forms of television advertising for cigarettes and other tobacco products shall be prohibited."</p> <p>This was amended in 1997 (97/36/EC) to ban teleshopping for cigarettes:</p> <p>Art 13 "All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited"</p> <p>The Directive also bans programme sponsorship by tobacco companies:</p> <p>Art 17. a.2 Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.;</p>	
<p><b>UK</b></p> <p><b>BBC</b> Producers' Guidelines on coverage of sponsored events England Current Code</p> <p><b>ITC</b> Code of Programme Sponsorship England Current Code</p>	<p>A number of major sports events are sponsored by tobacco companies. Particular care must be taken in the coverage of such events. Coverage of tobacco sponsored sports events in the United Kingdom is subject to official regulation.</p> <p>The BBC publishes its code of practice in its 'Producers' Guidelines' document. The BBC has set its own more stringent restrictions on coverage of sport sponsored by tobacco companies in the UK and retains the right to impose further conditions. The BBC will not sign new contracts to cover tobacco-sponsored sports or other tobacco sponsored events which it has not previously covered.</p> <p>All broadcasters other than the BBC are regulated through the Independent Television Commission (ITC) which specifically disallows tobacco companies from sponsoring television programmes. The ITC's Code of Programme Sponsorship determines the boundaries of the relationship between a commercial sponsor and broadcaster.</p>	
<p><b>UK</b></p> <p><b>BBC</b> Producers' Guidelines on anti-social behaviour Current Code</p>	<p>Both, the BBC and the ITC have guidelines that determine the way smoking is portrayed in its programmes.</p> <p>The underlying rationale for these restrictions stems from the acknowledgment that tobacco can constitute a serious health risk, and that previously acceptable forms of social behaviour like smoking alter over time.</p>	

<b>ITC</b> ITC' Guidelines on anti-social behaviour Current Code	Smoking in programmes is generally portrayed only if central to a character. Smoking in documentaries, interviews and other factual programmes is considered to be inappropriate.
<b>UK</b> ITC Prohibition of tobacco advertising on television text services Current Code	All advertising of tobacco products on television text services such as CEEFAX is proscribed under the Independent Television Commission's Code.
<b>UK</b> ITC Guidelines on product placement in programmes Current Code	Product placement is defined as the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme-maker or ITC licensee (or any representative or associate of either). This is not allowed for any product, tobacco or otherwise.
<b>UK</b> ITC Guidance notes on the advertising of smoking deterrent products Current Code	<p>Though tobacco advertising is banned on television, certain nicotine products to help people stop smoking can be advertised.</p> <p>Here, Independent Television Commission outlines the context under which smoking deterrent products such as nicotine replacement therapies may be advertised.</p>

Smoking in the workplace		Back to Top
Regulation	Description	
<p><b>EU</b> Council Directive 89/391/EEC In Force</p> <p><b>The Management of Health and Safety at Work</b></p> <p>Council Directive 89/391/EEC is implemented in England by Statutory Instrument 1992 No. 2051 as 'The Management of Health and Safety at Work Regulations 1992'.</p>	<p>Health and safety of workers framework directive, has wide-ranging provisions and sets down minimum requirements for the effective managerial control of health and safety matters at work.</p> <p>Although this directive does not make specific references to tobacco, provisions laid out in articles defining the responsibilities of employers do oblige them to pay regard to risks to exposure. For example, provisions demand that particularly sensitive risk groups must be protected against the dangers which specifically affect them. This could offer protection to asthmatics from exposure to passive smoke in the workplace.</p>	
<p><b>EU</b> Council Directive 89/654/EEC In Force</p> <p><b>Minimum safety requirements at work</b></p> <p>Council Directive 92/85/EEC is implemented in England by Statutory Instrument 1996 No. 1592 as part of The Construction (Health, Safety and Welfare) Regulations 1996 (Schedule 6).</p>	<p>If staff restrooms are provided appropriate measures must be taken for the protection of non-smokers against discomfort caused by tobacco smoke.</p> <p>This means that where there is a single rest area, it should be non-smoking.</p>	
<p><b>EU</b> Council Directive 92/85/EEC In Force</p> <p><b>Safety and Health at Work of Pregnant Workers</b></p> <p>Council Directive 92/85/EEC is implemented in England by Statutory Instrument 1994 No. 2865 as part of The Management of Health and Safety at Work (Amendment) Regulations 1994.</p>	<p>This EU Directive lays out measures to encourage improvements in the safety and health at work of workers who are pregnant, who have recently given birth or are breastfeeding.</p> <p>The above workers must be considered a specific group – and exposure to dangerous agents, processes or working conditions must be assessed – and provisions made to protect such workers.</p> <p>In the case of pregnant women being exposed passive smoke, this legislation requires the employer to make an assessment of the risks involved, take measures to limit or eliminate those risks, or relocate the employee affected in another position.</p>	
<p><b>EU</b> Council Directive 90/394/EEC In Force</p> <p><b>Protection of Workers from Carcinogens at Work</b></p> <p>The UK Control of Substances Hazardous to Health (COSHH) Regulations Statutory Instrument 1994 N. 3246 (6,7) implements this.</p>	<p>The carcinogens at work directive aims to protect workers against the health and safety risks that might arise from exposure to known carcinogens. Where there are workplace carcinogens (not including tobacco smoke itself!) then the employer must employees of the additional risks arising from tobacco use...</p> <p>Article 11 Information and training of workers 1. Appropriate measures shall be taken by the employer to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning:</p>	



	<p>(a) potential risks to health, including the additional risks due to tobacco consumption;</p> <p>Bizarrely, the COSHH regulations also require: 7.(3) Without prejudice to the generality of paragraph (1), where the assessment made under regulation 6 shows that it is not reasonably practicable to prevent exposure to a carcinogen by using an alternative substance or process, the employer shall apply all the following measures, namely— [...] (e) the prohibition of eating, drinking and smoking in areas that may be contaminated by carcinogens;</p> <p>Banning smoking (the emission of carcinogens) where people smoke doesn't seem to be the intention of this law – it seems the carcinogens have to arise in the process of work itself.</p>
<p><b>UK</b> Employment Rights Act 1996 In Force Legislation England, Wales, and Scotland only</p>	<p>Non-smokers may claim that smoking at work has caused them distress or forced them to leave their job and can cite the employer as being in breach of the Employment Rights Act 1996.</p> <p>The contract of employment which regulates the relationship between employer and employee is subject to general principles of statute law. In addition to expressed terms within the contract there will also be 'implied terms'. These by be implied by statute such as the Health and Safety at Work Act 1974, or by common law. Such implied terms include the common law obligation placed on employers to take care of employees. This obliges employers to take all reasonable steps to protect employees as soon as they are aware of a risk, or could be expected to be aware of a risk.</p>
<p><b>UK</b> Health and Safety and Work Act (1974) In Force Legislation England, Wales, and Scotland only</p>	<p>Section 2(2)(e) of the Health and Safety at Work Act places a specific duty on the employer in respect of employees:</p> <p><i>"to provide and maintain a safe working environment which is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work".</i></p> <p>This means that if a risk to health can be demonstrated, for example if a worker with a respiratory condition is forced to work in a smoky atmosphere which may make that condition worse, the employer must take action to deal with the risk. Health and safety inspectors can take enforcement action if necessary in these circumstances, but ultimately it would be for the courts to decide in a particular case whether the risk to health was significant.</p>
<p><b>UK</b> Approved Code of Practice Draft Proposal England, Wales, and Scotland only</p>	<p>The Approved Code of Practice (ACoP) is a consultation document proposed by the Health and Safety Commission (HSC). The Commission recommended to the Government to adopt the ACoP as measure to protect individuals in the workplace from the ill effects from exposure to passive smoking. Had the government accepted the measure, the ACoP would have been amended to the existing Health and Safety at Work Act 1974. The government has called for further consultations with trade bodies before committing to the ACoP.</p> <p>The ACoP would provide clear guidance on how all the existing legislation should apply to passive smoking – it would in effect be a consolidation.</p> <p>Note there is a later version of this document not publicly available.</p>



Smoking in public places		Back to Top
Regulation	Description	
<b>England</b> Environmental Protection Act 1990 In Force Legislation  <b>Protection from second-hand smoke in the home</b>	<p>A common source of complaint in civil disputes is the seepage of cigarette smoke from one premises into the premises of a non-smoker. This is especially true when a smoker lives in an apartment below, and the problem can lead to awkward stand offs.</p> <p>However, section 79 of the Environmental Act commits any fumes, gases, or smoke that is deemed to be prejudicial to health or a nuisance to be a "statutory nuisance". Section 80 of the Act allows for local authority to intervene in such a situation, evaluate the nuisance caused and require the party responsible for the nuisance to 'prohibit or restrict its occurrence or recurrence'.</p> <p>If this fails, Section 82 of the Act allows the appellant to take their case to a magistrates court for adjudication.</p>	
<b>UK</b> Public Places Charter Voluntary Agreement In Force	<p>Agreement between the government and bodies representing the hospitality industry that recognises that non-smoking is the norm and that there should be increasing provision of facilities for non-smokers. The Public Places Charter was set up in 1998 and warrants a written smoking policy, implementation of non-smoking areas and installation of ventilation systems as appropriate, by pubs.</p>	
<b>UK</b> The Food Safety (General Food Hygiene) Regulations 1995 In Force Legislation England, Wales, and Scotland only  <b>Personal hygiene requirements of food handlers</b>	<p>Chapter VIII of Schedule 1 of The Food Safety Regulations 1995 sets out the basic levels of personal hygiene expected from any individual handling food. This means that people preparing food in pubs and restaurants for example are not allowed to smoke.</p> <p>The accompanying Guide to General Food Hygiene Regulations 1995, in its section on general guidance on personal hygiene specifically demands that 'anyone whose work involves handling food should never smoke in food handling areas.'</p>	

Youth access		Back to Top
Regulation	Description	
<b>EU</b> COM(2002) 303 final Proposal  <b>Recommendation on prevention of smoking and initiatives to improve tobacco control</b>	<p>This council recommendation seeks to tighten tobacco control measures with particular emphasis on youth access to tobacco.</p> <p>Amongst the proposals:</p> <ul style="list-style-type: none"><li>• adult only access to cigarette machines</li><li>• removal of tobacco products from display</li><li>• young people to prove their age prior to purchase</li><li>• banning sales of packet of 10</li></ul> <p>These recommendations do not call for primary legislation – but proposes changes to existing legislation such as directives on product regulation and labelling.</p>	
<b>UK</b> Children and Young Persons (Protection from Tobacco) Act 1991 In Force Legislation England, Wales, and Scotland only	<p>The Act amended and strengthened the existing Children and Young Persons Act 1933 and the Children and Young Persons Act (Scotland) 1937 regarding the sale of tobacco to minors.</p> <p>This Act increased the penalties for the sale of tobacco to persons under the age of 16, prohibited the sale of unpackaged cigarettes and made provision for local authorities to undertake enforcement action relating to offences connected to the sale of tobacco.</p>	

Customs and Excise		Back to Top
Regulation	Description	
<b>UK</b> Notice of change in tobacco duty rates In force  <b>Official notice of duty rates following 2002 Budget</b>	<p>In April 2002, the Chancellor announced a 6p rise in the price of a packet of 20 cigarettes. He said the increase in price was for public health reasons. The price of a packet of cigarettes is to rise with inflation, which in effect is a price-freeze in real terms.</p> <p>This notice by Customs explains how new duty rates are to be applied.</p>	
<b>EU</b> Council Directive 92/12/EEC In Force  <b>'Personal Consumption' Guidelines for Tobacco and Alcohol</b>	<p>This directive rules on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.</p> <p>In addition, the directive lays down arrangement for products that are subject to excise duties and other taxes that are levied directly or indirectly on the consumption of these products.</p> <p>Importantly, in the absence of restrictions on the movement of products such as tobacco and alcohol between member states, Article 9 of Directive 92/12/EEC sets out guidelines for national governments on quantities considered not to be of commercial volumes.</p>	
<b>UK</b> Tobacco Product Regulations 2001 In Force  <b>Fiscal markings on tobacco products</b>	<p>In 1999, amidst concern for the rise in tobacco smuggling, The Chancellor of the Exchequer commissioned Martin Taylor, now chairman of WH Smith, to conduct an independent evaluation into the government anti-smuggling strategy. The result were a series of recommendations represented in a report Tackling Tobacco Smuggling, which is the main statement of policy on tackling tobacco smuggling.</p> <p>One of the recommendations adopted by the Government from Mr Taylor's study was to print prominent fiscal markings on tobacco product packaging to indicate 'UK Duty Paid' to distinguish between legitimate trade and contraband trafficking.</p> <p>The Tobacco Product Regulations 2001 requires tobacco products to carry a 'UK Duty Paid' markings from 1 July 2001, and any retailers failing to comply are liable to a fine up to £5000.</p>	
<b>England</b> The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2000 In Force	<p>With the Channel Tunnel an increasingly popular thoroughfare between the UK and mainland Europe, this legislation deems goods being brought into Britain via France to be commensurate to goods being imported as soon as they enter the control zone of the French side.</p> <p>This enables determinations to be made on imported tobacco and alcohol via the tunnel in the same way that they are in the United Kingdom.</p> <p>This order applies to certain provisions relating to the relief from payment of excise duty on imported alcohol and tobacco conferred on Community travellers.</p>	

Taxation		Back to Top
Regulation	Description	
<b>UK</b> Finance Act 2001 Legislation In Force	<p>Provisions in the Act set out rates of duty on tobacco products.</p> <p>A breakdown of tobacco tax can be obtained by using ASH's Tax Calculator. The calculator shows how the different elements of tobacco tax contribute to the retail price (can be edited and downloaded as MS Excel spreadsheet). This also includes a calculator for showing how much it costs to be a smoker.</p>	
<b>EU</b> Council Directive 92/79/EEC Council Directive 92/80/EEC Council Directive 95/59/EC  <b>Excise Duties</b>	<p>The EU has applied limits governing the structure of tobacco duties (see directives 92/79/EEC on cigarettes, 92/80/EEC on products other than cigarettes and 95/59/EC). These may have had some effect in raising minimum duties, but their prime purpose is to stop the use of the excise tax system acting as a protectionist barrier to trade.</p> <p>A new proposal to restructure and raise minimum excise duties (Council Proposal COM/2001/0133 final) had been proposed by the Commission. The proposal included measures to discourage traffic flows of contraband tobacco products from low tax bracket member states to higher rate member countries. But the proposal suffered a defeat in the European Parliament and was not adopted.</p>	

Product regulation and labelling		Back to Top
Regulation	Description	
<p><b>EU</b> Council Directive 2001/37/EC In Force</p> <p>The Consumer Protect: The Tobacco Products (Manufacture, Presentation and Sale) Regulations 2002 Statutory Instrument 2002 N. 3041 implements this.</p> <ul style="list-style-type: none"> <li>DH Consultation on Tobacco regulation directive 2001/37/EC</li> </ul> <p><b>Product Regulation and Labelling</b></p> <p>The provisions of the directive enter force over several years – this means that previous UK statutory instruments implementing the EC directives still stand until they are superseded. The remaining instrument still in force is:</p> <p>Part of Council Directive 92/41/EEC (ban on oral tobacco) is implemented in England by UK Statutory Instrument 1992 No 3134 as The Tobacco for Oral Use (Safety) Regulations 1992</p>	<p>This directive replaces two previous directives on labelling (see 89/622/EEC, 92/41/EC) and tar levels (90/239/EEC).</p> <p>Directive 2001/37/EC requires a range of measures to be taken by manufacturers of tobacco products such as dedicating more surface area to health warnings on tobacco product packaging, the proscribing of misleading descriptors such as 'mild', 'low-tar', 'light', 'ultra-low' and setting ceilings to the yields of tar (10mg), nicotine (1mg) and carbon monoxide (10mg) for all cigarettes manufactured within the community irrespective of whether for consumption or export.</p> <p>Council Directive 2001/37/EC also incorporates measures from directive 92/41/EC, which bans the sale of oral tobacco in the EC countries with the exception of Sweden, and Norway.</p> <p>Time-table for implementation of Council Directive 2001/37/EC measures is as follows:</p> <p><b>30 Sept 2002:</b> New warnings on packs</p> <p><b>31 Dec 2002:</b> Picture specifications proposed by the Commission</p> <p><b>31 Dec 2002:</b> Ingredients disclosure</p> <p><b>30 Sept 2003:</b> Branding – misleading descriptors etc banned</p> <p><b>1 Jan 2004 :</b> Max tar, nicotine, CO yields to apply</p> <p><b>31 Dec 2004:</b> Review of directive to be completed</p> <p><b>31 Dec 2004:</b> Commission proposal for common Ingredients list</p> <p><b>1 Jan 2007:</b> Max yields applied to exports</p> <p>This directive was subject to a challenge by British American Tobacco over the proscription of descriptors such as 'mild' and 'light'.</p> <p>However, on 10 September 2002 an opinion by the Advocate General declared provisions contained in the directive as valid. See press release.</p> <p>On 10 December 2002, ECJ ruling C-491/01 deemed the banning of descriptors for tobacco products intended for the European market as valid. See press release.</p> <p>Tobacco products for export, however, are exempt from the restrictions on descriptors.</p>	
<p><b>UK</b> Voluntary agreement on the use of new additives in tobacco products Voluntary Agreement In Force</p> <p><b>Tobacco Additives</b></p>	<p>Over 600 additives are allowed in the manufacture of tobacco products in the UK. Additives are controlled under an extreme loose and decentralised regulatory framework.</p> <p>The scrutiny of the additives rests with the Department of Health and its Technical Advisory Group (TAG).</p> <p>The agreement also includes mutual recognition arrangements that <b>require</b> additives approved in other EU countries to be permitted in the UK. This is a major loophole.</p>	

In a joint document Tobacco Additives, cigarette engineering and tobacco additives Clive Bates of Action on Smoking and Health (London), Professor Dr. Martin Jarvis of the Imperial Cancer Research Fund (London) and Dr Gregory Connolly of the Massachusetts Tobacco Control Program (Boston) provide a comprehensive overview of the various voluntary agreements, regulations and agencies involved in the control of additives in tobacco.



Smoking cessation		Back to Top
Regulation	Description	
<b>England</b> The National Health Service (General Medical Services) Regulations 1992 (amendment) Legislation In Force  <b>Terms of Service for Doctors</b>	Paragraph 12 of Schedule 2 of this piece of legislation requires doctors to advise patients on their general health, and in particular about the significance of diet, the use of tobacco, consumption of alcohol and the misuse of drugs.  Wherever appropriate, doctors must advise against smoking as part of the service they provide to their patients.	
<b>England</b> The National Health Service (General Medical Services) Regulations 2001 (amendment) Legislation In Force  <b>NRT on prescriptions on the National Health Service</b>	On National No Smoking Day 2001, the public health minister Yvette Cooper announced that nicotine replacement therapies (NRT) such as patches, lozenges and gum were to be made available on prescription from local general practitioners.  Prior to the announcement, NRT drugs were included in schedule ten of the General Medical Services, which lists drugs that GPs cannot prescribe.  From 17 April 2001 in England and from May 1 2001 in Wales, nicotine replacement therapies were made available to the general public on prescription.  However, prescription of these drugs remains age sensitive and at present one has to be 18 in order to make use of the NHS initiative.	
<b>England</b> The Medicines General Sale List Order 2001 (amendment) Legislation In Force  <b>Availability of NRT on the High Street</b>	This amendment to the Medicines General Sales List altered the status of many nicotine replacement therapies from being a controlled drug available when supplied under the supervision of a pharmacist (Pharmacy only), to one available on the high street (General sales).  These amendments came into force on 31 May 2001.	

Consumer protection		Back to Top
Regulation	Description	
<b>EU</b> Council Directive 92/59/EEC In Force  <b>General Product Safety</b>  The EC directive was brought in England by Statutory Instrument 1994 No. 2328 as The General Product Safety Regulation 1994.	General provisions set out by this directive could apply, in part at least, to tobacco products, although the regulations are not tobacco specific  The regulations stipulate that no producer shall place a product on the market unless the product is a safe product. The status of these regulations as applied to tobacco is unclear.	

Agriculture		Back to Top
Regulation	Description	
<b>EU</b> Directory of Community legislation in force relating to Raw Tobacco In Force  <b>Common Agricultural Policy (CAP) and Tobacco Subsidies</b>	<p>Currently, the growth and cultivation of raw tobacco is governed by EU regulation and legislation under the Common Agricultural Policy (CAP). Tobacco is produced by several member countries, primarily Spain, Italy and Greece. Under the terms of CAP, producing countries are eligible to claim EU subsidies on tobacco crops. In 1998, €870m (£524m) worth of subsidies were paid out through CAP.</p> <p>The basic modus operandi of the CAP tobacco subsidy regime is set out in Regulation 2075/92 (as amended) with specific implementation in Regulation 2848/98, which introduced a series of reforms. The subsidy regime now pays according to three criteria – quantity produced, quality and price (previously there was a set payment per kilo). Farmers that produce higher quality receive higher subsidy payment. The system is a 'deficiency payment' arrangement in which premiums are paid to growers to compensate for the difference between standardised European production costs and world prices.</p> <p>Article 26 of Regulation 2075/92 as amended by Regulation 1636/98 requires a review of the tobacco subsidy regime: Before 1 April 2002, the Commission shall submit a report to the European Parliament and to the Council on the functioning of the common organisation of the market in raw tobacco.</p> <p>A Commission Proposal for an EU strategy for sustainable development has called for a phasing out of tobacco subsidies. This intention was emphasised by Romano Prodi, President of the EC, in a Speech to the European Parliament in which he specifically called for a phase out of CAP subsidies for tobacco producers.</p>	
<b>Links</b>	Further links to relevant documents on the Common Agricultural Policy	

European Union treaty and case law		Back to Top
Regulation	Description	
<b>EU</b> Consolidated treaty establishing the European Union In Force  Consolidated treaty establishing the European Community In Force	<p>The European Union treaty was agreed at Maastricht in 1992, subsequently amended at Amsterdam (1997) and Nice (2000 – not in force).</p> <p>The European Union incorporates and reshapes the European Economic Community (established in the Treaty of Rome of 1957) and renames it the 'European Community'. This was also amended at Amsterdam and Nice.</p>	
<b>EU</b> Article 152 of the Treaty of the European Community In Force  <b>Public Health Policy</b>	<p><b>Public health in the treaty</b></p> <p>The fundamental weakness in EU tobacco policy is that the treaty article on public health (Article 152) does not allow binding EU legislation – directives or regulations – except in areas that do not apply to tobacco (blood products, human body parts etc).</p> <p>Public health legislation on tobacco regulation and promotion has been shoehorned in as 'single market' legislation under Article 95.</p> <p>Though Article 152 encourages public health measures, it explicitly does not permit harmonisation of laws of member states under this article:</p> <p><i>152.4(c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.</i></p> <p>This may not simply be an oversight - some member states are reluctant to give power to the EU by widening the scope of the treaty unless there is a benefit from pooling sovereignty – i.e. some cross border or international rationale for agreeing to be bound by a qualified majority decision of the member states. This is sometimes known as the subsidiarity principle.</p>	
<b>EU</b> Article 153 of the Treaty of the European Community In Force  <b>Consumer Protection Policy</b>  <b>EU</b> Green Paper on European Union Consumer Protection Policy statement  <b>Consultation document on future heading of Consumer Protection Policy</b>	<p><b>Consumer protection</b></p> <p>Like public health, consumer protection legislation is similarly constrained. Article 153 on consumer protection, promotes encouragement of consumer protection and requires it to be taken into account, but it requires the use of Article 95 on the single market for more concrete measures. It only allows legislation that is ancillary (see 3b) to support, supplement and monitor the policy pursued by the Member States.</p> <p>"1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.</p> <p>2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.</p> <p>3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:</p> <p>(a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;</p> <p>(b) measures which support, supplement and monitor the policy pursued by the Member States."</p>	

<p><b>EU</b> Article 136 and 137 of the Treaty of the European Community In Force</p> <p><b>Social Chapter: Protection of workers</b></p>	<p><b>Workplace</b> The directives on worker protection were written under what is now Article 136 &amp; 137 of the Social Chapter of the Maastricht treaty.</p>
<p><b>EU</b> Article 28 and Article 30 of the Treaty of the European Community In Force</p> <p><b>Quantitative Import and Export Policy</b></p> <p><b>EU</b> Article 49 of the Treaty of the European Community In Force</p> <p><b>Freedom to provide cross border services</b></p>	<p><b>Trade-related challenges to public health measures</b> The treaty is dominated by an emphasis on free trade and the single market. A particular concern is the possible use of Treaty provisions on free movement of goods and services (Article 28) to undo national public health legislation. For example, national advertising legislation could be challenged as a barrier to entry.</p> <p>Article 30 allows a public health defence but the burden of proof is on the public health authority to show the measure is 'proportionate' and not 'arbitrary discrimination' or a disguised restriction on trade between Member States'.</p> <p>A challenge to the Swedish law banning alcohol advertising has been brought before the ECJ using Article 28 and 30. An opinion by the Advocate General (Opinion case 405/98) concludes that there are circumstances where the treaty can be used to block national legislation...</p> <p>"A national rule banning the commercial advertising of alcoholic beverages directly to the general public constitutes a measure equivalent to a quantitative restriction on imports of such beverages, prohibited by Article 30 [now 28] of the EC Treaty, and a restriction on the freedom to provide cross-border advertising services, prohibited by Article 59 [now 49]. Such a rule may be justified by reason of its aim to protect the health and life of humans from the dangers of excessive consumption of alcohol, but only in so far as that aim cannot be achieved just as effectively by less restrictive measures. A ban which extends to commercial advertising in periodicals a significant part of whose subject-matter is lawfully devoted to alcoholic beverages is in principle unnecessary and ineffective in that regard, and thus incapable of such justification."</p>